



THE SECRETARY OF COMMERCE  
Washington, D.C. 20230

MAY 25 1994

The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

Pursuant to Section 308(d) of the Interjurisdictional Fisheries Act, I have determined that a fishery resource disaster has occurred in the West Coast salmon fishery. This acute crisis is the result of several natural disaster events, including an extended period of drought, floods, warm ocean conditions, and less than normal snowpack throughout the western United States. Additional long-term factors include habitat degradation of freshwater and estuarine habitat, overfishing, and over-reliance on hatcheries to maintain dwindling wild stocks.

The adverse economic impacts that affect commercial salmon fishermen in Washington, Oregon, and California are severe, but can be somewhat alleviated with federal assistance. Under Section 308(d), persons engaged in commercial salmon fisheries who have suffered uninsured losses will be eligible for grants if funds are available. Congress appropriated \$65 million to the Department of Commerce in 1992 to be available until expended to respond to fishery resource disasters. They have not yet been spent. In order to make these funds available to commercial fishermen, it is necessary for you to make a request to Congress for emergency relief for declared disasters.

I am asking that you make such a request to Congress so that \$12.0 million of these funds can be made available for assisting commercial salmon fishermen on the west coast.

Thank you for your consideration of my request.

Respectfully,



Ronald H. Brown



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
OFFICE OF THE GENERAL COUNSEL  
Washington, D.C. 20230

MAY 25 1994

MEMORANDUM FOR: Douglas K. Hall  
Assistant Secretary for  
Oceans and Atmosphere

FROM: *James W. Brennan*  
James W. Brennan  
Acting General Counsel

SUBJECT: Use of the Interjurisdictional Fisheries Act  
to Assist the West Coast Salmon Fisheries Under  
the Disaster Provisions of Section 308(d)

You asked whether the Secretary's Declaration of a fishery resource disaster in the West Coast salmon fisheries complies with the substantive and procedural requirements of the Interjurisdictional Fisheries Act, 16 U.S.C. § 4107. I have reviewed the provisions of the Act and the record accompanying the Declaration. I conclude that the substantive requirements have been met, and the actions planned are consistent with the Act's procedural requirements.

Section 308 (d) of the Act provides that the Secretary may "award grants to persons engaged in commercial fisheries, for uninsured losses determined by the Secretary to have been suffered as a direct result of a fishery resource disaster arising from . . . any other natural disaster." As stated in the Secretary's Declaration, stock abundances in the West Coast salmon fisheries has reached record low levels. It is clear that recent natural events have precipitated these current low levels of abundance. These environmental events include the extended drought in California, less than normal snow pack throughout the western United States, drought followed by extensive flooding in the State of Washington, and an extreme El Nino ocean warming event during 1992-1993 that is believed to have been responsible for extremely poor survival. This satisfies the Act's requirement that the current fishery resource disaster must arise from natural causes. The fact that other factors, which have existed for decades, have depressed the fishery and made it more susceptible to these natural disasters, does not vitiate that determination.

In order for the funds to be available to the Department of Commerce, President must present a formal request to Congress to make available a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement, as defined in section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. I understand that the President will be asked to make that request.



NMFS is drafting an Advance Notice of Proposed Rulemaking (ANPR) in response to the Act's requirement that the Secretary shall establish, after notice and opportunity for public comment, appropriate limitations, terms, and conditions for awarding grants under section 308 (d). It is NMFS' intent to develop a proposed rule, after considering the comments submitted on the ANPR. NMFS then plans to publish a final rule that would establish the grant program. The ANPR specifically invites comments on certain issues that NMFS will consider when it develops the grant program. I find this approach to be consistent with the law.

The grant program must be consistent with several additional provisions of the Act; eligibility for a grant is limited to any person that has less than \$2,000,000 in gross revenues, annually; and grants may be awarded for up to 75 percent of any uninsured and otherwise uncompensated commercial fishery loss resulting from the fishery resource disaster, but no person may receive more than \$100,000 in the aggregate for all losses.

The Act requires that the Secretary also determine the beginning and ending dates of the fishery resource disaster. Since the determination of these dates is integral to the decisions as to how the grants will be awarded, the ANPR as drafted requests comments on how these dates should be determined. Once the comments are considered, the Secretary can make the determination required by the Act.

Therefore, I conclude that the Secretary is legally authorized to award grants to persons engaged in the West Coast salmon fishery for uninsured losses suffered as a direct result of the fishery resource disaster arising from the natural resource disasters described in the Secretary's determination. I further conclude that all requirements of the law which must be fulfilled will have been satisfied prior to the award of any grants when the additional steps listed above have been taken as proposed by the agency.